

**41-47 Nick LLC v Hammond**

2015 NY Slip Op 31463(U)

August 4, 2015

Supreme Court, New York County

Docket Number: 153979/2015

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ  
*Justice*

PART 13

41-47 NICK LLC,  
Plaintiffs,  
- against -

INDEX NO. 153979/2015  
MOTION DATE 07-08-2015  
MOTION SEQ. NO. 003  
MOTION CAL. NO. \_\_\_\_\_

WILLIAM HAMMOND,  
Defendants.

The following papers, numbered 1 to 5 were read on this motion for civil contempt.

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

PAPERS NUMBERED

1 - 4

Answering Affidavits – Exhibits \_\_\_\_\_

5

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon a reading of the foregoing cited papers, it is ordered that Plaintiff’s motion to hold Defendant in civil contempt for his failure or refusal to comply with this Court’s Order dated April 24, 2015 is granted.

Plaintiff is the owner of a building located at 41 St. Nicholas Terrace, New York, N.Y. (herein “Plaintiff”). Defendant is a rent stabilized tenant residing in apartment #14 (herein “Apartment”) of the Building. Defendant complained of violations existing at the Apartment, commenced an HP proceeding (Index No. HP1098/2014 in the Civil Court of the City of New York, New York County (herein “HP Action”) against plaintiff to have that Court order plaintiff to repair said violations, and obtained an Order dated July 15, 2014 directing plaintiff to correct the violations existing at the Apartment. Plaintiff attempted to make the necessary repairs, but alleges that the defendant has refused to provide plaintiff access to the Apartment.

Plaintiff commenced this action by summons and complaint dated April 21, 2015 asserting causes of action for injunctive relief enjoining defendant from preventing plaintiff’s employees and agents from entering the Apartment to perform necessary repairs, and declaratory relief declaring that Plaintiff has a right to access the Apartment and that defendant’s failure to provide access is grounds upon which defendant’s tenancy may be terminated. Plaintiff moved for an order requiring defendant to provide unfettered access into and throughout the Apartment for the purpose of making the necessary repairs to correct and remove the violations. In an Order dated April 24, 2015, this court granted plaintiff’s motion and ordered defendant to refrain from interfering with plaintiff, its contractors, servants, agents or employees in their efforts to correct existing violations within the Apartment.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

In May 2015, plaintiff's employees and agents made various attempts to enter the Apartment in order to cure the HPD violations. Defendant either did not answer the door, denied plaintiff's employees and agents access to the Apartment, or allowed plaintiff's employees and agents access to the Apartment and later told them to leave the Apartment before the work could be completed. In an Order dated May 8, 2015, this Court again Ordered defendant to provide plaintiff's employees and agents access to the Apartment in order to cure the HPD violations.

On June 8, 2015, defendant allowed plaintiff's employees and agents access to the Apartment to perform work. After plaintiff's property manager, Dio Del Rosario left the Apartment, defendant refused to allow plaintiff's employees and agents access to perform the work previously discussed with Del Rosario. Defendant again told plaintiff's employees and agents to leave the Apartment.

Plaintiff now moves by Order to Show Cause for an Order holding defendant in contempt of court for his repeated refusal to allow Plaintiff access to the Apartment in order to perform court-ordered repairs. Plaintiff also seeks to have defendant incarcerated for ten (10) days so that it can perform the work necessary to cure the HPD violations, alternatively, for an Order directing Plaintiff access to the Apartment on set dates.

The New York City Administrative Code § 27-2008 requires a tenant to allow an owner access to tenant's dwelling in order to make repairs or improvements required by law. CPLR § 6301 grants this court the power to issue an order directing the defendant to perform an act for the benefit of plaintiff, or to refrain from performing an act which would be injurious to the plaintiff. A preliminary injunction may be granted under CPLR article 63 when the party seeking such relief demonstrates (1) a likelihood of success on the merits; (2) the prospect of irreparable injury and (3) a balance of equities tipping in the moving party's favor (*Doe v. Axelrod*, 73 N.Y. 2d 748, 532 N.E.2d 1272, 536 N.Y.S.2d 44 [1988]).

As previously stated by this Court, Plaintiff is entitled to access to the Apartment in order to make repairs and to correct any code violations. If Plaintiff is not granted access to the Apartment Plaintiff will suffer irreparable injury in that the Apartment will be in violation of the code thereby detracting from the value of the Building. The equities lie in Plaintiff's favor to gain access to the Apartment in order to correct approximately thirty-six (36) violations. Plaintiff has again met the requirement for a preliminary injunction.

"In order to find that contempt has occurred in a given case, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. It must appear, with reasonable certainty, that the order has been disobeyed. Moreover, the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party. Finally, prejudice to the right of a party to the litigation must be demonstrated" (*McCormick v. Axelrod*, 59 N.Y.2d 574, 583, 453 N.E.2d 508, 512-513, 466 N.Y.S.2d 279, 283-284 [1983]).

This Court's prior Order directing defendant to grant Plaintiff access to the Apartment was a lawful court order that clearly expressed that an unequivocal mandate was in effect. Defendant was aware of this Court's prior Order and has disobeyed said Order. Plaintiff has been prejudiced by its inability to cure over thirty-six (36) HPD violations, which plaintiff has been Ordered to correct.

Accordingly, it is hereby ORDERED that Plaintiff's motion is granted, and it is further,

ORDERED, and ADJUDGED that defendant William Hammond is in contempt of court for his failure to comply with this Court's two prior Orders directing defendant to provide Plaintiff, its employees and agents with unfettered access into and throughout the Apartment, and it is further,

ORDERED, that defendant William Hammond may purge himself of his contempt of court by:

- a) providing unfettered access into and throughout apartment #41 located at 41 St. Nicholas Terrace New York, N.Y. 10027, to the Plaintiff owner, its contractors, servants, agents or employees to correct those conditions in the apartment annexed to the moving papers as Exhibit E under Mot. Seq. 001, and that are HPD violations ordered to be corrected by the Civil Court and which are the basis of Defendant's HP action filed under index number 1098/14 in Housing Court New York County;
- b) by refraining from interfering with Plaintiff owner, its contractors, servants, agents or employees in their efforts to correct the existing conditions in apartment #41 which are annexed to the moving papers as Exhibit E under Mot. Seq. 001, and that are HPD violations ordered to be corrected by the Civil Court and which are the basis of Defendant's HP action filed under index number 1098/14 in Housing Court New York County;
- c) providing such access within five (5) days from the date of service of a copy of this Order with Notice of Entry; and
- d) providing such access between the hours of 8:00 a.m. and 6:00 p.m. for ten (10) continuous work days which shall commence on the first day access is granted and shall continue uninterrupted, except for weekends and holidays if necessary at the discretion of the Plaintiff, until 6:00 p.m. of the tenth day at which time the conditions shall have been corrected, and it is further,

ORDERED, that failure by defendant William Hammond to timely purge his contempt of court, shall result in this Court issuing a warrant directed to the sheriff or other enforcement officer of any jurisdiction in which defendant may be found, commanding such officer to arrest defendant and bring him before this court, or a judge thereof, for a hearing to determine whether defendant should be committed to the custody of the Sheriff until he complies with this Order in all respects and for such further disposition as this court in its discretion shall then direct, and it is further,

ORDERED, that plaintiff owner, its contractors, servants, agents or employees shall have unfettered access to the apartment #41 solely for the purpose of correcting the existing conditions in apartment #41 which are annexed to the moving papers as Exhibit E under Mot. Seq. 001, and that are HPD violations ordered to be corrected by the Civil Court and which are the basis of Defendant's HP action filed under index number 1098/14 in Housing Court New York County, and it is further,


ORDERED, that plaintiff, its contractors, servants, agents or employees shall exercise such access in a manner that will not unreasonably interfere with the use of apartment #41 by defendant for its intended purpose, and it is further,

ORDERED, that plaintiff, its contractors, servants, agents or employees shall not be held liable for any damage to the apartment #41 or any of defendant William Hammond's belongings within the apartment #41 during the time plaintiff, its contractors, servants, agents or employees are performing work within apartment #41, and it is further,

ORDERED, that upon completion of all repairs, plaintiff shall restore the apartment to the condition it was in prior to access being originally granted and shall leave the apartment in a broom clean and habitable condition.

Dated: August 4, 2015

ENTER:

MANUEL J. MENDEZ  
J.S.C.  
  
\_\_\_\_\_  
MANUEL J. MENDEZ  
J.S.C.

Check one:     FINAL DISPOSITION     NON-FINAL DISPOSITION  
Check if appropriate:    DO NOT POST     REFERENCE